



Written Reply Submitted to Supreme Court

Division No. Writ-6 Writ No.077-WO-0973 (077-FN-0509)

Through: The Office of the Attorney General, Ramshahpath, Kathmandu.
Writ No. 077-WO-0973

Chief District Officer Dhundi Prasad Niraula on behalf of District
Administration Office Lalitpur Writ Reply Presenter

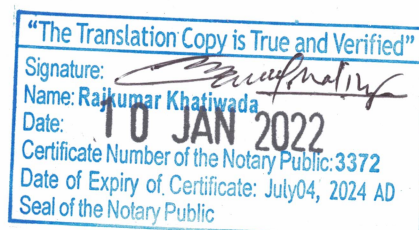
Vs.

Rukshana Kapali, aged 22, of Lalitpur District Lalitpur
Municipality Ward no 16 Patako tole..... Opponent

Case: - Certiorari, Mandamus.

In the writ petition filed before the Honorable Supreme Court demanding to issue an order of certiorari/mandamus according to Article 1, 12, 16, 17, 18, 27, 28, 31, 33, 35, 37, 38, 39, 42, and 133 (2) (3), and in accordance with Rule 40 of the Supreme Court Rules 2074 by the writ applicant by making this office also as one of the opponents, an order dated April 13, 2021 (2077-12-31 B.S) has been received at this department on April 22, 2021 (2078-01-09 B.S) where the Honorable Court has requested to submit a written reply within 15 days from the date of receiving the notice, this written response with the following evidence is presented within the given time limitation.

- (1) As the claim mentioned by the opponent writ petitioner in the petition is included with the attached written reply, the details will be informed from the same written reply letter, so it has not been repeated here.
- (2) Regarding the claim made in the writ petition of the Opposition writ petitioner, the documents including the attached citizenship, educational certificates, and the correspondence sent to the opposition bodies mention the names and gender details

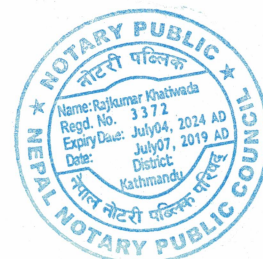




contrary to my actual gender identity. Since the confidentiality of my personal details is going to be violated in case these documents are made public, an interim order is sought to keep the documents confidential including the citizenship, educational certificates, correspondence with the opposition bodies and not to make available to any person, organization, media other than the officer related to this issue including not to make it public in any way and to keep these documents completely secret in any other way after this case is closed. Names and gender details that do not accurately represent my gender identity are mentioned. I do not want to be identified by that name and gender. When such names and gender details are addressed, it hurts my self-esteem and also causes me emotional pain. Therefore, an interim order is sought to refrain the work of this writ petition including proceedings, hearings, pleadings, and even the written reply to be sent by the respondent should not cause me to be addressed by that name and gender details and to use the name Rukshana mentioned in the petition and not to use, mention and address my dead name. When it comes to mentioning that name and gender details, let's address or mention the dead name or the name mentioned in the educational certificate. It is the responsibility of the applicant to apply to the Registration Department, Lalitpur Metropolitan City Office to have the name and the gender details mentioned in the personal documents such as birth certificate and national identity card be amended as per the actual gender identity in the gender details and the name Rukshana Kapali. To correct the details, Section 17 (1) of the Nepal Citizenship Act, 2006 stipulates that a person must submit an application to the designated authority with the required proof if the last name or age mentioned in the certificate of Nepali citizenship differs from the certificate of educational qualification or if there is a slight error in the certificate of citizenship. If such an application is submitted with proof of being a woman, the citizenship certificate will be amended by mentioning the woman in the gender column and a duplicate copy of the Nepali citizenship certificate will be given.

- (b) Therefore, the writ is subject to be rejected on behalf of this office on the ground that there is no truth in the claim of the opponent writ petitioner, as the application for certiorari/injunction submitted by the respondent petitioner is baseless, fictitious and false.

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Name:	Rajkumar Khatriwada
Date:	10 JAN 2022
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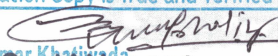


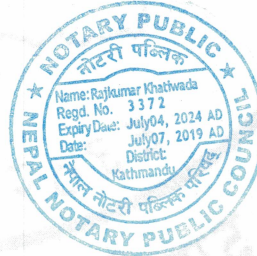
- (6) The arguments of the public prosecutor who will be present when the present case is presented before the bench be considered as an integral part of this written reply.

Presenter

(s/d.....)
(Dhundi Prasad Niraula)
Chief District Officer
District Administration Office
Lalitpur

Date: May 5, 2021 (2078/01/19 B.S.) day 01

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Written Reply Submitted to
the Supreme Court

Through: The Office of Attorney General, Ramsahpath

Head of District Education Development and Coordination Unit, Lalitpur,
Ramesh Prasad Mainali Written Reply Presenter

Vs.

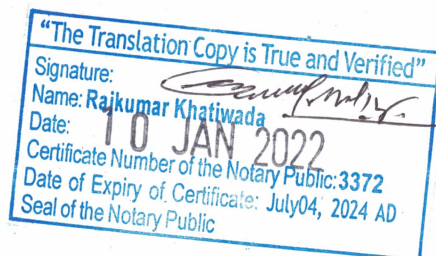
Residing in Lalitpur District, Lalitpur Metropolitan Ward No. 16,
RukshanaKapali..... Writ Petitioner

Writ No. 2077-WO-0973

Case: Certiorari

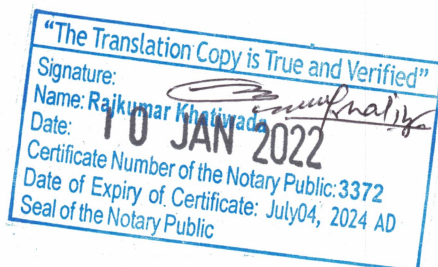
In the given case Defendant has made Head of District Education Development and Coordination Unit, Lalitpur, as opposition and as per the order of one single bench judge a written reply on why the order should not be issued according to the claimed writ petition? Along with the basis, reason, and evidence on the same were ordered to be submitted within a 15day period from the Supreme Court within date April 22, 2021 (2078-01-09 B.S.) on the case filed however, due to the Covid-19 impact and prohibition order the reply could not be issued on time and since the situation is getting better, in favor of this center this written reply has been presented as follow:

1. Since the claims made under the writ petition can be extracted from the writ petition document itself, the details are not listed below.
2. It has been claimed under the writ petition by the main petitioner that, opposition, petitioner is a transgender woman and has not been able to attain amended Citizenship and Academic Certificates according to her gender preference which has violated the constitutional right of the petitioner and any act, action, recommendation, or decision affecting the gender identity needs be quashed by the order of certiorari and for the name of the petitioner to be listed as RukshanaKapali and gender preference as a woman, prohibition order also to be issued from the court has been claimed.





3. Based on the following reasons and basis humble request is made to quash the petition:
- a) Education Act, 1971, Section 4(k) under its restrictive paragraph has mentioned that the examination of basic level will be conducted by District Education Office i.e., Education Development and Coordination Unit and according to the letter of Ministry of Education Science and Technology S.No.1570 dated May 2, 2018 (2075-01-19 B.S.) the past work done by the district education office has been conducted by this center. Similarly, along with a letter from the Ministry of Education Science and Technology with S.No.379 dated 10-03-2020 (2076-11-27 B.S.), "Criteria relating to conducting examination and Authentication of basic Level class 8, 2076" approved by the ministry level decision, Section 15 states that the examination committee has to provide certificate and the draft for a certificate has been mentioned in Annex 2 of the same criteria. There has been no violation of constitutional and legal rights of the opposition by any legal action that is conducted according to the prevailing laws by this center, therefore the writ petition should be quashed.
- b) Under description 5.11 of the writ petition, the opposition has mentioned that a request had been made in this center to amend the name in the DLE certificate but in gender description, "Other" has been mentioned. In relation to that, the name has been amended based on the necessary documents and evidence which has been accepted by the opposition. We would like to present to the court that the gender description as "other" has been listed based on the description provided by the opposition herself and in accordance with the prevailing law.
- c) With permission of the opposition writ petitioner and based on the documents and evidence provided by her, the name and gender description have been amended and because of this none of the constitutional or legal rights have been violated and the writ petition is worth quashing and should be quashed.
4. Written replies from all other offices that are made opposition will be presented.
5. Arguments presented by the Public Prosecutor regarding the presented writ petition hearing shall be considered an integral part of this written reply.
6. The Description stated in the document are correct and true, I would bear the consequences if proven otherwise.



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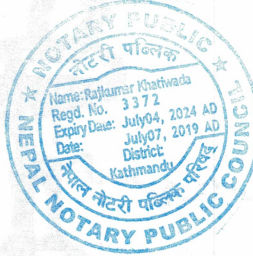
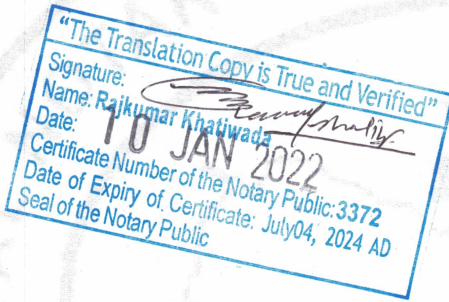
(Government Stamp)

Writ Reply Presentor

(s/d.....)

Ramesh Prasad Mainali
Head of Center For Education
and Human Resource
Development

Dated: June 23, 2021 (2078-03-09 B.S.), day 4





Written Reply Submitted to
Supreme Court

Through: The Office of the Attorney General, Ramshahpath, Kathmandu.
Writ No. 077-WO-0973

Director-General on behalf of National Identity Card and Written Reply Presenter
Registration Department ... Opponent

Vs.

Rukshana Kapali

Opponent

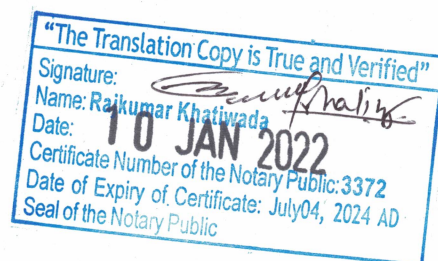
Petitioner

Case: - Mandamus.

In the writ petition filed before the Honorable Supreme Court by the aforesaid opponent by making this office also one of the opponents, an order dated April 13, 2021 (2077-12-31 B.S) has been received at this department on April 19, 2021 (2078-01-06 B.S) where the Honorable Court has requested to submit a written reply within 15 days from the date of receiving the notice and clarifying as to what was happened on the matter and as to why the order should not be issued as demanded by the Petitioner, and this response is filed stating the basis and reasons for not issuing the order as per the demand of the petitioner within the given time limitation.

1. The main arguments of the petitioner:

As the name and gender details mentioned in my personal paper according to my actual gender identity is gender woman and name Rukshana Kapali and had applied to amend details in respective institutions, National Identity Card and Registration Department in case of birth certificate, Office of Lalitpur Metropolitan City and Office of Lalitpur Metropolitan City Ward No. 16, District Education Development and Coordination Unit Lalitpur in case of Class 8 educational certificate, Ministry of Home Affairs and District Administration Office in case of Citizenship Certificate, Passport Department in the case of Passport, Election Commission in the name of Voter Identity Card, Eden Garden Secondary Boarding School in the name of Class 10 character certificate including my personal documentary evidence provided by all the opposition





office, requested to issue an appropriate order, at a time limit of at most one month from the date of issue of the order.

2. The Department of National Identity Card and Registration has always been committed to protecting and promoting the rights of the citizens under the Constitution and the law. The rights provided in the constitution and other prevailing laws apply equally to every citizen and no order has been issued to curtail and deprive of the rights provided by such laws. As far as the petitioner's demand is concerned, the name and gender mentioned in the personal papers gender should be mentioned gender as woman and name Rukshana Kapali as per the actual gender identity and the citizenship certificate should be amended accordingly was the claim of the petitioner. Section 25 of the National Identity Card and Registration Act, 2020, reads that if the name, surname or other details of the child born have to be corrected after issuing the certificate after the enactment of this Act, then the concerned person can apply in the prescribed format in the office of the local registration office within one year of receiving such certificate and there is a provision in Rule 23 of the Regulations, 2020 that if the details of registration of personal incidents have to be corrected, an application has to be submitted to the concerned local registrar's office in the format as per schedule 26. However, since the above-mentioned Acts and Rules which may amend the gender details and names according to the gender identity of the petitioner are not mentioned anywhere and the issue of what kind of legislation should be made or amended in any matter is within the jurisdiction of the legislature, there is no reason to make this department opponent. It is requested to quash the writ petition filed against this department without any basis and reason.
3. The written reply to be submitted by the other body that is made opponent by the writ petitioner will further confirm the matter.
4. The arguments of the public prosecutor who will be present during the hearing of the present case and the evidence that he can present should be considered as an integral part of this written reply.

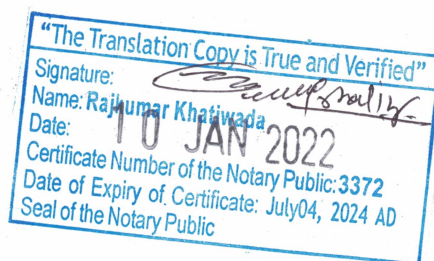
Written reply Presenter

(s/d.....)

(Jitendra Basnet)

Director General

Date: April 30, 2021 (2078-01-17 B.S) day 06





Written Reply Submitted to

Supreme Court

Writ No. 077-WO-0973

Through: Office of Attorney General, Ramshahpath, Kathmandu

Acting Secretary Rajkumar Shrestha on behalf of Election
Commission, Nepal

Written Reply Presenter
Opponent

Vs.

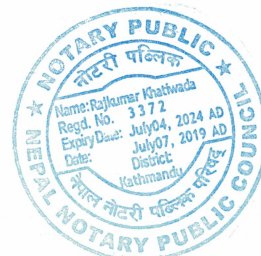
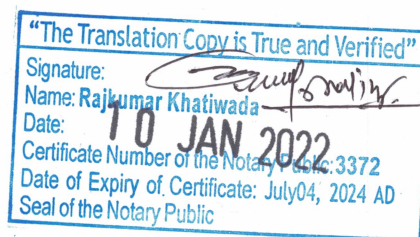
Rukshana Kapali, aged 22, female, resident of Lalitpur District,
Lalitpur Metropolitan City ward no. 16 Patako Tole.....

Petitioner
Applicant

Case: Mandamus

In the writ petition filed before the Honorable Supreme Court by the opponent applicant by making this Commission also as one of the opponents, an order has been received at this department on April 18, 2021 (2078-01-05 B.S) where the Honorable Court has requested to submit a written reply within 15 days from the date of receiving the notice and clarifying as to what was happened on the matter and as to why the order should not be issued as demanded by the Petitioner, and this written response is filed through Office of the Attorney General as per the demand of the petitioner within the given time limitation.

- (1) I am a transgender woman. My gender identity is female. As a Nepali, it is my basic human right to enjoy the fundamental rights, including education, protected by the constitution and the law, however, as I am a transgender woman, I have been deprived of the rights mentioned above, my personal details mentioned in the legal documents including my citizenship and the educational certificate could not be amended according to gender identity which has hurt the self-esteem, the petitioner has also demanded to issue Mandamus and appropriate orders to amend the educational certificate, national identity card, birth certificate, names and details in the voter identity card by mentioning Rukshana and women and to amend the existing






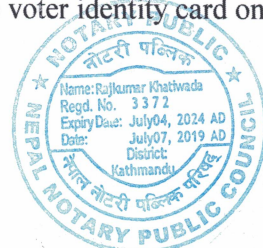
legal system and not to make public the details of the dead name and dead gender details kept in the records.

(2) The writ application is subject to be dismissed based on the following basis and reasons :

(a) What is the involvement of the Election Commission in the matter taken by the Opposition petitioner? Also, what kind of action or decision of this commission has violated the constitutional and legal rights of the petitioner? Nothing is mentioned regarding the same in the petition. When claiming something against someone, the involvement and the basis and reason for making the respondent should be clearly mentioned. In the present writ petition, the writ petition shall be dismissed in *prima facie* as it has not been able to disclose the basis and reasons for the involvement of this commission and the need to make it a respondent in the matter where the petitioner has taken the claim.

(b) Citizenship is the proof given by a state to a person to confirm the fact that he is a legal citizen of any state. Citizenship is a civil right granted to a person living in that country by descent or birth or other reasons for permanent residency according to the constitution and law. Section 6 of the Voter Registration Act, 2017 BS has made provision for the registration of the name of a Nepali citizen as a voter in the Electoral Roll. Section 27 of the Act provides that the Commission shall provide voter ID cards to the voters whose names are included in the voters' list with photographs. In the Voter Registration Form and Biometric Base Voter Registration System (BBVRS), the same details mentioned in the Basic Certificate of Citizenship submitted by the voter can be included in the BBVRS. The Commission has been using BBVRS software for compiling voter lists with photo and biological details. The Commission is compiling the details of the voters on the basis of the details mentioned in the citizenship certificate issued by the Ministry of Home Affairs and the District Administration Office. In such a case, the writ petition submitted to the Commission is subject to be dismissed to the extent that it is possible to compile the voter list and provide voter identity card on the basis of

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the same list in case the correction of citizenship details from the concerned body or the word indicating gender identity as mentioned by the petitioner is mentioned.

Therefore, the writ petition submitted is subject to be dismissed based on the above-mentioned facts, basis, and reasons. Should be dismissed.

- (3) The respondent will be aware of the action taken by the other body, which is made opponent in the writ petition, through their written reply submitted by the concerned body.
- (4) The arguments of the public prosecutor who will be present during the hearing of the present case and the evidence that he can present should be considered as an integral part of this written reply.
- (5) The matter written in it is true. If found to be false, should bear the consequences according to the law.

Written reply Presenter

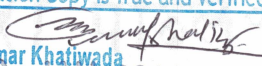
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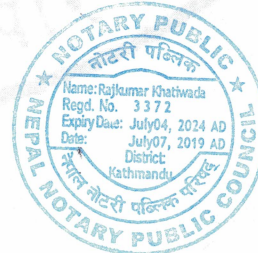
Rajkumar Shrestha

Acting Secretary

Election Commission

Date: May 2, 2021 (2078-01-19 B.S)

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Written reply Submitted to
the Supreme Court

Subject: Request to dismiss the Writ petition of Case No. 077-WO-0973

On behalf of Eden Garden Secondary School situated in Lalitpur District, Lalitpur Metropolitan Ward No. 22, Bagdole, school's administration committee, authority holding principal Augustine Lama's representative school's office coordinator of age 30 Kirti Kamal Joshi..... Written Reply Presenter

Vs.

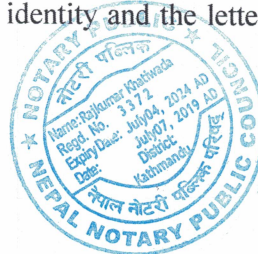
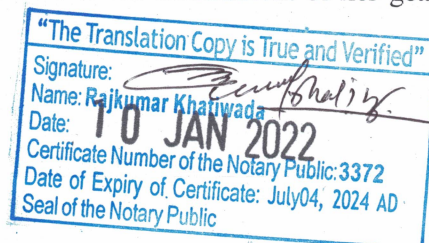
Resident of Lalitpur District, Lalitpur Metropolitan, Ward No. 16, PatakoTole, RukshanaKapali Petitioner

Case: Certiorari, Mandamus, Prohibition along with Quo-Warranto

In the given case according to the order dated April 13, 2021 (2077-12-31 B.S.) by the court, the defendant school in the case was provided a 15day time period from the Supreme Court to revert back with a written reply within the date April 22, 2021 (2078-01-09 B.S.) however, because of the workload of the office and special circumstances of Covid-19 and because of lockdown, the situation was beyond the control and the data provided was missed, through a separate application the date has been requested to hold and the written reply is being presented within the extended time provided. My written reply arguments are mentioned below:

1. As the complete description of the claim of the opposition writ petitioner can be obtained from the original file the details have not been repeated here. Observing the petition in summary the petitioner is a Transgender Women and has the basic human right to live her life with dignity and original identity and enjoy equal access to

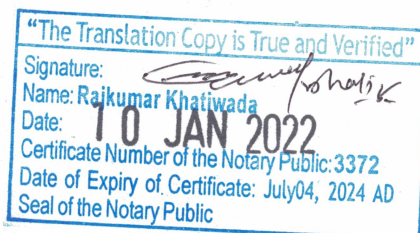
resources provided by the government, it can be seen that since the petitioner is a Transgender Women she has been deprived of the rights. Therefore, through the application related to the amendment of her gender identity and the letters, she wants to





erase her dead name and dead gender records from those offices and for the same, the request to issue an order to the court has been made.

2. Firstly: The petitioner has under her character certificate of Class 10 provided by the Eden Garden Secondary School requested to amend the gender description as “woman” and name as “Rukshana Kapali” as per her gender identity. Petitioner was enrolled in this school on date May 21, 2001 (2058-02-08 B.S.) and according to the birth certificate presented to the school dated April 13, 2001(2057-12-31 B.S.) with Registration No. 1330 of then Lalitpur District, Lalitpur Sub-metropolitan the petitioner, deadnameKapali and gender were listed as Male, so the school had issued documents based on the same deadname and gender.
3. According to the application provided to this school on date 09-06-2019(2076-2-26 B.S.) petitioner has listed her name Kapali in the Marksheet of Class 8, In 2072, she has obtained citizenship in the name of Rukshana Kapali, and by including the recommendation from the ward that both the name belong to the same person a request to obtain a recommendation to change the name has been filed to Education Development and Coordination Unit according to that from this school on date June 18, 2019 (2076-03-03 B.S.) with Ref No. 2076/019/03 after providing recommendation letter to the Education Development and Coordination Unit on date 24/01/2021(B.S. 2077/10/11) writ petitioner had written a letter requesting to amend name and gender description, however since, under the record of National Examination Board Sano Thimi, the name has been listed as Kapali and gender as Male, the school has to issue the character certificate according to the record therefore, without amendment of the mentioned record first school cannot make the amendment because of this the issue writ petition is requested to be quashed.



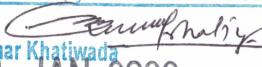


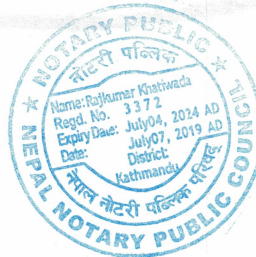
4. The arguments made by the appointed Legal Representative of the respondent shall be considered a part of this.
5. The fees to register the written reply have been presented along.
6. Enclosed Documents
 - a) Photocopy of Birth Certificate, Registration No. 1330, dated May 21, 2001 (2058-02-08 B.S.)
 - b) Photocopy of Admission Form dated, May 21, 2001 (2058-02-08 B.S.)
 - c) Photocopy of District Level Examination Board Lalitpur Mark Sheet, now Rukshana Kapali (Deadname Kapali)
 - d) Photocopy of Recommendation written to Education Development and Coordination Unit with Ref No.2076/019/03, dated June 18, 2019 (2076-03-03 B.S.) by Eden Garden Secondary School
7. The Description stated in the document are correct and true, I would bear the consequences if proven otherwise.

Written Reply Presenter
(s/d.....)

Kirti Kamal Joshi

Dated: August 1, 2021 (2078-04-17 B.S.), Day 1

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Written reply Submitted to
the Supreme Court

Through: The Office of the Attorney General, Ramshahpath
Case no. 077-WO-0973

Shankhardas Bairagi, Chief Secretary, on behalf of the Council of Ministers, Government of
NepalWritten Reply Presenter

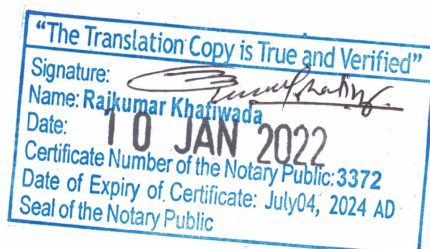
Vs.

RukshanaKapali aged 22, female, resident of ward number 16 PatkoTole, Lalitpur, Metropolitan
City, Lalitpur District..... Opponent/Petitioner

Case: Certiorari and others

In connection to the writ petition filed by the Petitioner before the Honourable Supreme Court bearing writ no. 2077-WO-0973 by making this office also as one of the opponents, an order was issued by the Court seeking us to submit a written reply within 15 days from the date of receiving the notice, and clarifying as to what was happened on the matter and as to why the order should not be issued as demanded by the Petitioner, which was received in this office on April 19, 2021 (2078-01-06 B.S.) and this response is filed within the time limitation.

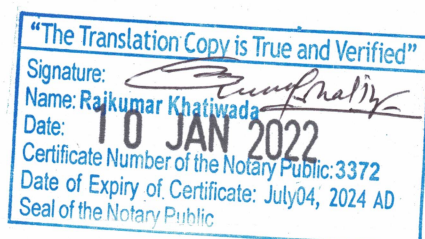
1. The Petitioner is a transgender woman. Due to various kinds of hatred, stigma, and comments from other people, she was not able to express her true gender identity openly. However, after passing the SLC she decided to live her life with her true gender identity hence, the applicant tried to obtain citizenship according to her actual gender identity and establish her identity according to her actual gender identity but due to the lacunas in the laws the citizenship was issued to her on June 26, 2015 mentioning 'Others' in the gender section instead of "female". As the word, 'other' was mentioned in the citizenship certificate which has barred the petitioner from





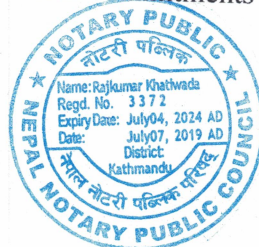
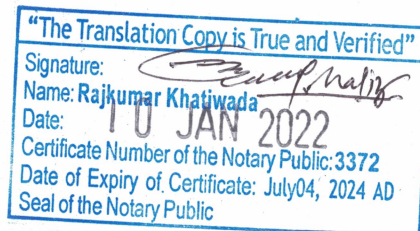
humane treatment, the petitioner has demanded that an order of Mandamus be issued to amend and modify the name and paper proofs according to one's gender identity.

2. The Petitioner has failed to mention in the petition as to, what was the involvement of the Council of Ministers, Government of Nepal, on the matters raised by the Petitioner? and, similarly, what kind of work, action, or decision of this office has violated which constitutional and legal rights of the Petitioner? When making a claim against anyone, one has to specify clearly the involvement of the other in relation thereto and the basis and reasons for making a respondent. Since the Petitioner could not specify the involvement of and the grounds and reasons for making the Office of Prime Minister and Council of Ministers, Government of Nepal, a respondent on the subject matter raised by the Petitioner in this writ petition, the writ petition is liable to be rejected prima facie; therefore, should be dismissed.
3. Article 10 to Article 15 of the Constitution of Nepal has constitutionally ensured the provision of citizenship. Even though it is mentioned in Article 12 of the Constitution that *"a person who obtains the citizenship of Nepal by descent in accordance with this Constitution may obtain a certificate of citizenship of Nepal with gender identity by the name of his or her mother or father"* the petitioner does not seem to have mentioned the basis on which the petitioner had troubles in obtaining the citizenship certificate along with the petitioners' gender identity. After the promulgation of the Constitution of Nepal, an amendment bill has been tabled in the Federal Parliament to amend the Citizenship Act, 2006.
4. A clear provision has been made to obtain citizenship by applying to the concerned body for obtaining a citizenship certificate by following the rules, procedures, and procedures prescribed by the Nepal Citizenship Act, 2063 and Rules, 2063. Also, the directive on issuing citizenship to persons belonging to sexual and gender minorities in the gender section, 2069, has already specified that such persons as the petitioner who are qualified to obtain citizenship according to the prevailing law of Nepal, can obtain citizenship and specify "others" in the gender section after receiving a recommendation from the concerned local body and educational institution.





5. The writ petitioner has failed to disclose the legal basis for demanding an order be issued to amend or change the personal details such as name and gender details in her academic and other personal legal documents. Rules for correcting age, name, and caste regarding the correction of government documents have already been issued in 2017. Rule 3 of the rules stipulate that if a person wants to correct the age, name, and caste in their certificate, they have to submit an application to the Chief District Officer and the Chief District Officer can make the final decision after understanding the evidence and witnesses as per the requirement. Similarly, Rule 6 stipulates that an application must be submitted within six months of receiving the certificate to amend such documents. It is illegal to claim that government documents can be corrected from the writ jurisdiction under extraordinary jurisdiction without having to apply for correction of the documents that had to be corrected. No law can protect such a claim.
6. Article 17 of the Nepal Citizenship Act, 2063 stipulates that any person desiring to correct their caste or age for being differently mentioned in the academic certificate to that of the citizenship certificate or correct the minor mistakes in the citizenship certificate shall have to provide for an application with the necessary evidence to the designated authority. Similarly section 18 stipulates that any person who is aggrieved by a decree issued by a designated authority in accordance with this Act may file a petition with the Government of Nepal for revision of such decree. According to these provisions, if a person has to correct their citizenship details, they can apply as per Section 17 of the Nepal Citizenship Act, 2063 and if they are not satisfied, they can apply to the Government of Nepal within thirty-five days. The petitioner has not done so and is looking for recourse under writ jurisdiction which is not lawful.
7. In the past, cases have been filed in the Honorable Supreme Court and orders have been issued by the Honorable Supreme Court to grant citizenship by establishing the system of identity, the petition filed for hiding identification seems unreasonable. The issue of what kind of law to issue in the country is a matter of legislative wisdom. The Government of Nepal is committed to the implementation of the international commitments made by Nepal





along with the necessary policy arrangements for the identification and protection of sexual and gender minorities and various activities have been carried on from the province and the local level government as well. As the work done by the Government of Nepal has not affected the personal freedom of anyone, the submitted petition should be dismissed.

8. In relation to the activities performed by other concerned authorities, which are made a party to this case, the court would know their statements from the written replies submitted by the respective authorities.
9. Therefore, on the basis of the above-mentioned points, we request the honorable court to dismiss the writ petition.
10. Defense, arguments, and submissions from the learned public prosecutor to be presented during the hearing of the present case, may please be considered as an integral part of this written reply.

Written Reply submitted by

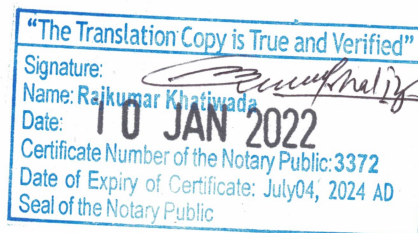
(s/d.....)

ShankardasBairagi

Chief Secretary

Government of Nepal

Dated: May 3, 2021 (2078-01-20 B.S.) day 2.





Written Reply Submitted to
the Supreme Court

Subject: To quash the writ petition of opposition

Lalitpur Metropolitan City Office Pulchowk1

Lalitpur Metropolitan Ward No. 16 Office1

On behalf of both and the head of the Lalitpur Metropolitan City Office, holding authority to file a case, ChiraBabu Maharjan, aged 63 years, residing in Lalitpur Metropolitan City Ward No. 10 and working as an employee in the office aged 23 years, Mamata Shrestha.....1 Written reply Presenter

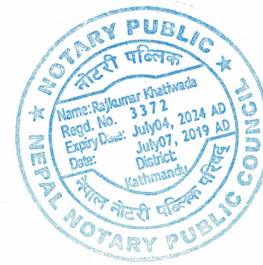
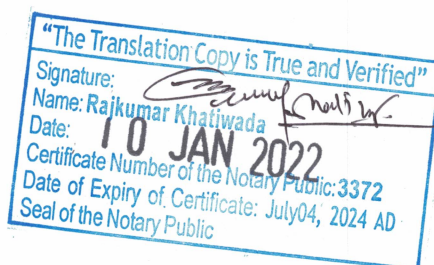
Vs.

Residing in Lalitpur District, Lalitpur Metropolitan Ward No. 16 PatkoTole, of age 22 RukshanaKapali.....1 Opponent

Case: Certiorari with Mandamus077-WO-0973

The defendant in the case was provided a 15day time period from the Supreme Court to revert with a written reply within date April 22, 2021(2078-01-09 B.S.) on the case filed however, the courts were shut down due to the second wave of COVID and as per the order issued on May 28, 2020 (B.S. 2077-02-15) and the notice issued on July 16, 2021(2078-04-01 B.S.) by Supreme Court full bench, the defendant is filing a reply within the given time.

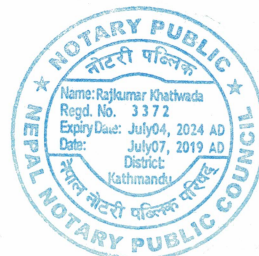
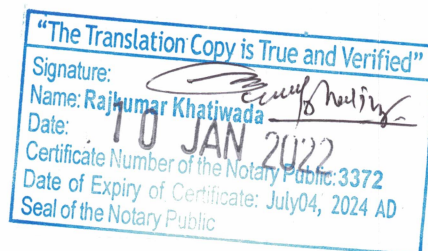
1. Since the claims made under the writ petition can be extracted from the writ document itself, the details are not listed below. Defendant, therefore, presents a written reply providing arguments to quash the writ petition.
2. Firstly: Lalitpur Municipality Office is a local government established in accordance with the preamble of the Local Government Operation Act 2074. The acts of the office have never been based on providing higher priority to any special person or depriving others of the rights provided by the act. The petitioner has accepted that the LalitpurMunicipality had amended the Birth Certificate and the certificate has been amended once however, the petitioner requested to amend the birth certificate for the 2nd





time demanding to amend the gender description under the birth certificate. Local Government Operation Act 2074 has not provided any measures to amend the Birth Certificate, it has only provided the power to issue a birth certificate. Since no such act has been done which results in violation of the fundamental rights of the petitioner, the petition should be quashed.

3. Details: The petitioner has requested to amend all the certificated from class 8, the petitioner has obtained all academic certificates on a name and identity and also obtained nationality on the basis of the same and now has applied to amend the gender description on the birth certificate to municipality no action was taken on the matter as there are no measures provided by the law to amend the gender description under birth certificate, if the petitioner had provided an amended version of all the certificates from other government bodies then according to the law, the amendment would have been made to the birth certificate issued by this municipality.
4. Petitioner has time and again under the registered documents in different government bodies provided different details. In a similar incident, the petitioner has accepted that under ward no. 16 she has obtained a recommendation on September 9, 2015 (2072-05-23 B.S.) by being physically present that 2 names used by her are of the same person. Therefore, no such violation of fundamental rights has taken place in fact, the petitioner has been provided all the demanded documents and letters from concerned authorities from time to time. She has taken recommendations once and as per her convenience has been claiming to amend the mistakes time and again. To what extent such action is legally feasible should be understood by the defendant herself but, the claim is also made by the defendant to amend the provided recommendation itself, now even if the recommendation is amended or not amended by the decision of the court, it will not violate any fundamental rights of the petitioner in any condition. So, the writ petition should be quashed.
5. Therefore: According to the details mentioned above none of the fundamental or legal rights of the petitioner has been violated by the office and the writ petition should be quashed.





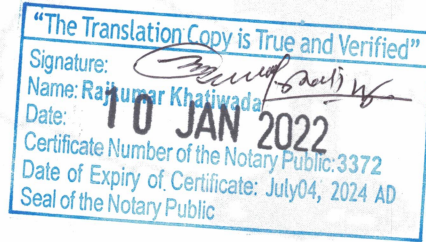
6. No legal representation has been appointed to submit this written reply, legal representation and the arguments presented in the future by the legal representative shall be considered a part of this written reply.
7. The fee for submitting this written reply has been enclosed with the document.
8. The Description stated in the document are correct and true, I would bear the legal consequences if proven otherwise.

Written Reply submitted by

(s/d.....)

Mamata Shrestha

Dated: August 31, 2021 (2078- 5- 15 B.S.), day 1





Written Reply Submitted to
the Supreme Court

Through: The Office of the Attorney General, Ramshahpath

Case no. 077-WO-0973

Ram Prasad Thapaliya, Secretary, on behalf of the Ministry of Education science and technology, Government of NepalWritten reply
Presenter

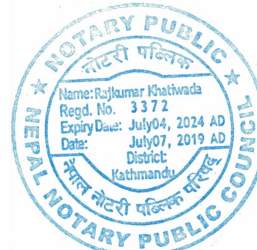
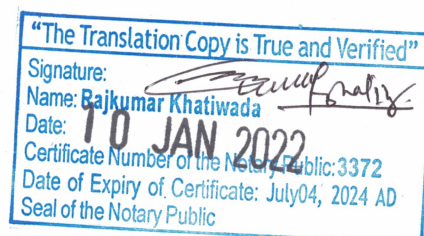
Vs.

RukshanaKapali.....
Opponent/Petitioner

Case: Mandamus

In connection to the writ petition filed by the Petitioner before the Hon'ble Supreme Court by making this office also one of the opponents, an order was issued by the Court on April 13, 2021 (2077-12-31 B.S.) seeking us to submit a written reply within 15 days from the date of receiving the notice, which was received in this office on May 14, 2021 (2077-01-06 B.S.) and this response is filed within the time limitation.

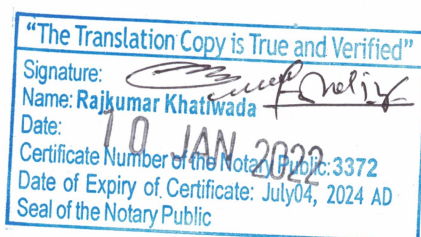
1. The Writ Petitioner has raised arguments in their petition that the marginalized Nepali citizens such as herself, transgender women, transgender men, intersex, non-binary, homosexual, bisexual, and bisexual, have not found their true identity. Although some precedents set by the Supreme Court have established the basic premise that it is a person's right to make a decision on the matter of gender identity, the definition of gender identity given by some prevailing laws is flawed. Due to the inability to accommodate people with all kinds of diversity and to address the right to gender identity in a comprehensive and inclusive manner in accordance with the spirit of the Constitution of Nepal and the values being developed and practiced by the modern world, this writ petition is filed to ensure the fundamental rights under the constitution and International law which has been violated and for issuance of orders to make appropriate provisions in the law to be amended and modified





as well as to be made in future laws. Other matters will be known from the writ petition itself hence it is not repeated here.

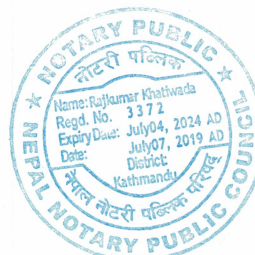
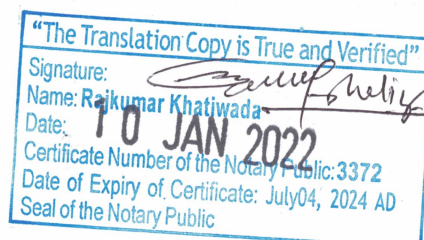
2. We submit to the court that the writ petition submitted by the petitioner should be dismissed on the following grounds,
 - a. It appears that the opponent has claimed that since the directive on issuing citizenship to persons belonging to sexual and gender minorities in the gender section, 2069, Annex 1 of Citizenship Rules 2063, Citizenship related prevailing act, rules, Age, Name and cast correction rules 2017, National Id and Civil Registration act 2076 have erroneous provisions they are unable to correct the gender details due to the flawed provision in the law. The Acts, Rules, and Directions mentioned by the writ petitioner are not related to this Ministry at all. No. None of the principles established by the esteemed court in the case of Sunilbabu Pant (NKP 2065 Issue No 4 Decision No 7958, (NKP 2074 Issue No. 9, Decision No. 9875), RajniShahi v. National Commission for Women (NKP 2070 Issue No. 1. Decision no. 8945), Suman Pant v. Immigration Department of the Ministry of Home Affairs (NKP 2074, Issue No. 12 Decision No. 9921) is not related to the writ petition filed against this Ministry. The Writ petitioner seems to have unnecessarily made us an opponent in this writ without even demanding the issuance of any order in the name of this Ministry. The Petitioner has failed to mention in the petition as to, what was the involvement of this Ministry, on the matters raised by the Petitioner? and, similarly, what kind of work, action, or decision of this office has violated which constitutional and legal rights of the Petitioner? When making a claim against anyone, one has to specify clearly the involvement of the other in relation thereto and the basis and reasons for making a respondent. Since the Petitioner could not specify the involvement of and the grounds and reasons for making this Ministry in this writ petition, the writ petition is liable to be rejected prima facie; therefore, should be dismissed.
 - b. In the writ petition of the Opposition, Article 45 (1) and 45 (2) of the SLC Examination Operation and Management Directive, 2068 BS and Article 5 of the Directive on Higher Secondary Education Council Examination, 2068 BS have issued legal documents such as educational certificates to thousands of citizens including the petitioner. They claim





that they have been deprived of the fundamental rights provided by the constitution by being unable to maintain the name and gender according to the real gender identity by amending the name and gender details on the basis of genitals during birth are wrong and baseless. By the time of studying secondary education and higher secondary education and getting the educational certificate, the applicant has become an adult due to their age and their sex has been identified. They have the ability to identify themselves as transgender women, transgender men, intersex, non-binary, homosexual, or whatever their gender is according to their self-experience. By that time, the necessary documents such as their birth certificate, citizenship, etc. have been prepared and the educational certificate will be issued on the basis of the same documents submitted by them. However, even if the required documents have not been prepared or prepared by this period, if those documents need to be amended, modified, and come with the recommendation of the concerned body, there is no condition to stop the amendment of educational records or any educational certificate. If the writ petitioner continues to change their gender on a daily basis or his self-perception changes moment by moment, it will not be possible to keep the educational records true at any moment. Apart from that, in general, no act, rule, or directive related to education has created an obstacle for oneself to obtain an educational certificate by maintaining one's gender identity or to exercise any of the constitutional and legal rights guaranteed by the constitution. In such a case, the unnecessary writ petition filed against this Ministry with baseless arguments should be dismissed.

- c. Therefore, no action of this Ministry or any act, rule, directive related to this Ministry has violated the constitutional and legal rights of the writ petitioner in any way. This Ministry is committed to the protection of the rights of all types of gendered Nepali citizens, including the writ petitioner seeking self-identifying gender identity. The writ petition filed without any clear grounds has no meaning hence it should be dismissed.
3. In relation to the activities performed by other concerned authorities, which are made a party to this case, the court would know their statements from the written replies submitted by the respective authorities.





4. Therefore, on the basis of the above-mentioned in point 2, we request the honorable court to dismiss the writ petition.
5. Defense, arguments, and submissions from the learned public prosecutor to be presented during the hearing of the present case, may please be considered as an integral part of this written reply.
6. The submissions as mentioned above are true and correct. If they are found to be incorrect, I will accept to be in accordance with the law.

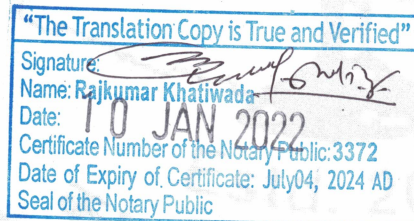
Written Reply submitted by

(s/d.....)

Ram Prasad Thapaliya
Secretary

Ministry of Education, Science, and Technology

Dated: April 22, 2021 (2078-01-09 B.S.), day 5





Written reply Submitted to
the Supreme Court

Through: Office of the Attorney General, Ramshahpath
Case no. 077-WO-0973

Maheshwar Newpane, Secretary, on behalf of the Ministry of Home Affairs, Government of
NepalWritten reply Presenter

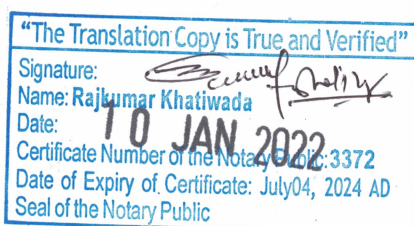
Vs.

Rukshana Kapali Opponent/Petitioner

Case: Mandamus

In connection to the writ petition filed by the Petitioner before the Hon'ble Supreme Court bearing writ no. 2077-WO-0973 by making this office also as one of the opponents, an order dated 13 April, 2021(2077-12-31 P.S.) was issued by the Court seeking us to submit a written reply vide the office of Attorney General within 15 days from the date of receiving the notice, and clarifying as to what has happened on the matter and as to why the order should not be issued as demanded by the Petitioner, which was received in this office on April 19, 2021 (2078-01-06 B.S.) and this response is filed within the time limitation encompassing the reasons thereof as to why the order shall not be granted.

1. The main argument of the petitioner is that to change the name and gender details mentioned in my personal documents to be amended by mentioning the gender details as "female" and name "Rukshana Kapali" according to my actual gender identity an order of mandamus and relevant order be issued within the time limit of one month in the name of National Identity Card and Registration Department, Office of Lalitpur Metropolitan City, Office of Lalitpur Metropolitan City Ward No. 16, in the case of birth certificate; in the name of District Education Development and Coordination Unit Lalitpur in case of an educational certificate of class 8; in the name of Ministry of Home Affairs and District Administration Office Lalitpur in case of citizenship certificate; in the name of the department of passport in the case of passports; in the name of the Election Commission in the case of voter ID cards; in the name of Eden Garden Secondary Boarding School in the case of a Class 10 character certificate;
2. The Ministry of Home Affairs has always been committed to protecting and promoting the rights of the citizen ; under the Constitution and the law. No or:er has been made to ensure





that the rights provided in the constitution and other prevailing laws apply equally to every citizen and deprive him of the rights provided by such laws. The rights provided in the constitution and other prevailing laws have been equally applied to every citizen and no order has been issued to deprive anyone of the rights provided by such law. As far as the demand of the petitioner to amend the name and gender mentioned in the personal documents such that the gender details as per the actual gender identity of the woman and the name Rukshana Kapali should be mentioned in the citizenship certificate is concerned, Section 17 of the Nepal Citizenship Act, 2063 stipulates that any person desiring to correct their caste or age for being differently mentioned in the academic certificate to that of the citizenship certificate or correct the minor mistakes in the citizenship certificate, shall have to provide for an application with the necessary evidence to the designated authority. Similarly Clarification: For the purpose of this section 'minor' mistake means the non-substantial details of the citizenship certificate to mean 'Kumari' "Devi" "bahadur" "Prasad" like words being added or not mentioned or difference in 'Aakar or Ikar (specific grammatical error in Devanagari) or other minor mistakes of that type. Hence, the issue of what kind of law should be made or amended in any issue falls under the jurisdiction of the legislature, there is no reason to make this ministry an opposition. The writ petition filed against this Ministry without any basis and reason should be dismissed.

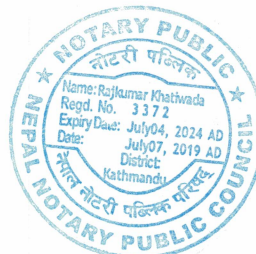
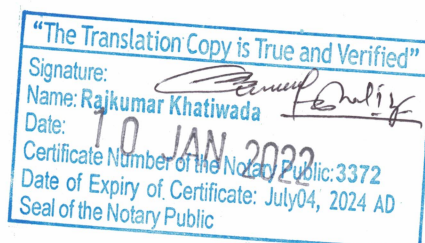
3. The other details will be known from the written replies submitted by other concerned authorities who have been made opponents by the Petitioner.
4. Defense, arguments, and submissions from the learned public prosecutor to be presented during the hearing of the present case, may please be considered as an integral part of this written reply.

Written Reply submitted by

(s/d.....)

Maheshwar Neupane
Secretary

Dated: April 27, 2021 (2078-01-14 B.S.), day 3





Written Reply Submitted to
Supreme Court

Through: Office of Attorney General, Ramshahpath, Kathmandu

Writ of the Year 2077, Writ No.-WO-0973

Secretary Udayraj Sapkota on behalf of the Ministry of Law, Justice, and
Parliamentary affairs

Written Reply
Presenter
Respondent

Vs.

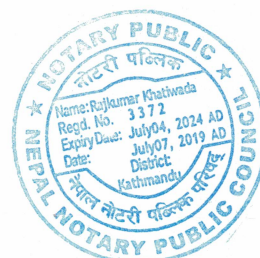
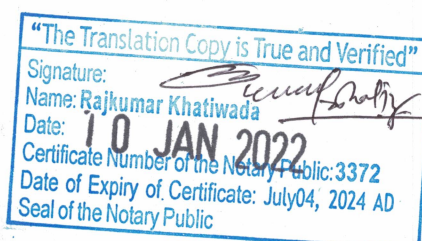
Rukshana Kapali,

Opposition
Applicant

Case: Certiorari and Mandamus et.al

In the writ of the year 2077, writ No. WO-0973 filed before the Honorable Court by the applicant by making this Ministry also one of the opponents, an order has been received at this department on April 4, 2021 (2078-01-06 B.S) where the Honorable Court has requested to submit a written reply within 15 days from the date of receiving the notice, and clarifying as to what was happened on the matter and as to why the order should not be issued as demanded by the Petitioner, and this response as explained below within the given time limitation.

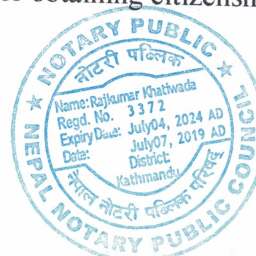
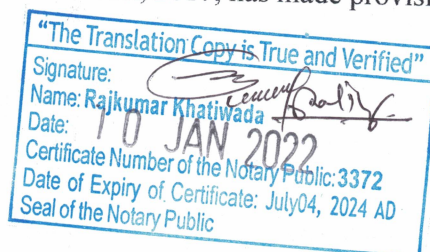
1. I am a Transgender Woman Nepali citizen. The act of Tribhuvan University refuse to register the registration form submitted on the grounds that the name and gender details did not match as in the academic certificates of class 10 and 12 and as the personal details of the citizenship and educational documents were issued without mentioning my real gender identity could not be amended, has humiliated, and it has violated the rights conferred by Articles 16, 18, 28, 31, 33, 35, 38, 39 and 42 of the Constitution, therefore the Petitioner has requested to issue the Mandamus to direct to register the registration form by mentioning the name 'Rukshana Kapali' and gender





description "female" according to the real gender identity. There is also a request to issue an order to amend the birth certificate, citizenship, passport, voter identity card, and educational certificates by maintaining the identity according to the real gender identity and to amend the necessary policies, rules, and procedures.

2. First of all, what kind of action or decision of this ministry has harmed the legal and constitutional rights of the petitioner? Since the writ petition could not even mention anything in this regard, it is not possible to file a writ petition against this ministry without any basis or reason. In addition, while establishing an opposition in a case, it is necessary to disclose the injustice done to the petitioner by the actions of such an opponent. As not been able to mention anything in the writ petition even in that regard, the writ petition is subject to be quashed in *prima facie*, should be quashed.
3. The constitution of Nepal has guaranteed fundamental rights from Article 16 to Article 46, and provision has been made for constitutional remedy in case of violation of such fundamental rights or deprivation of those rights. The Government of Nepal is conscious and active in ensuring that all citizens, without discrimination, enjoy the rights guaranteed by the Constitution and the law. Article 16 of the Constitution guarantees for the right to life with dignity, Article 17 provides for the right to freedom, by making provision for the right to equality in Article 18, it has provisioned in sub-article (1) of the same article that all citizens shall be equal before the law and shall not be deprived of equal protection of the law; and the Government of Nepal has been paying attention to this issue while formulating or amending the policy and law in accordance with the provision in sub-Article (3) which reads that the state will not discriminate among the citizens even on the basis of gender but special provisions can be made for the empowerment or development of gender identity and sexual minorities.
4. Article 12 of the Constitution of Nepal provides that a person who obtains citizenship of Nepal on the basis of descent can obtain a certificate of citizenship of Nepal with gender identity in the name of their mother or father. The Nepal Citizenship Act, 2006, National Identity Card and Registration Act, 2020, Passport Act, 2019, Voter Registration Act, 2017, has made provision for obtaining citizenship certificate, birth





certificate, passport and voter identity card, respectively and there is also a provision to correct some of the details mentioned in the certificate too. As far as the issue of gender identity mentioned in the said certificates is concerned, it is necessary to analyze the chain of the effect of the general amendment made in the certificate including citizenship too. Since the Certificate of Citizenship is an important instrument to establish legal relations between the state and the citizen and the various legal instruments of a person issued after acquiring citizenship will be issued under the same name and considering that the general change in citizenship will affect not only itself but also the work of other persons based on their legal relationship, the legislature has taken precautionary measures regarding the amendment of citizenship and other certificates. Amendments or changes made to such certificates create a state of discomfort and confusion even in the process of exercising one's constitutional and legal rights. Also, the legal provisions made to maintain the clarity of the services flowing from the state and the duty of the citizen towards the state cannot be said otherwise.

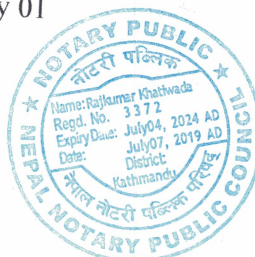
5. There is no doubt that the right to privacy of the petitioner should be protected by the constitution and law. As far as the application is concerned regarding Tribhuvan University refuses to register the registration form and refuses to mention the real gender identity of the applicant in other academic certificates, it will get cleared from the written reply of the concerned body including Tribhuvan University, therefore, no further mention was made in the written reply.
6. The arguments by the public prosecutor who will be present during the hearing of the case should be considered as an integral part of this written reply.
7. Therefore, the esteemed court is requested to dismiss the writ petition on the grounds and reasons mentioned.

Written Reply Presenter

(s/d.....)
(Uday Raj Sapkota)
Secretary

Date : April 2, 2021 (2078-01-19 B.S) day 01
(Government Stamp)

"The Translation Copy is True and Verified"	
Signature:	
Name:	Rajkumar Khatriwada
Date:	10 JAN 2022
Certificate Number of the Notary Public:	3372
Date of Expiry of Certificate:	July 04, 2024 AD
Seal of the Notary Public	





Written Reply Submitted to the
Supreme Court

Through the Office of Attorney General, Ramshahpath, Kathmandu

Subject: To Quash the baseless writ petition

On behalf of National Human Rights Commission, Hariharbhawan, Pulchowk, Lalitpur, holding
the authority to file a case, Acting Secretary Murari Prasad Kharel1

Written Reply Presenter

Vs.

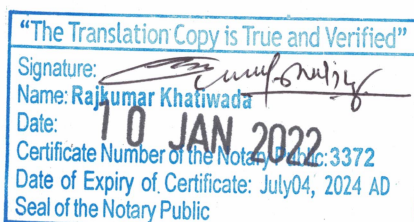
Residing in Lalitpur District, Lalitpur Metropolitan Ward No. 16, of age 22 Rukshana

Kapali.....1 Opponent

Case: Suitable order to be issued along with Mandamus (Writ No. 077-WO-0973)

The defendant in the case was provided a 15 day time period from the Supreme Court to revert with a written reply within date 23/04/2021 (B.S. 2078/01/10) on the case filed however, the courts were shut down due to the second wave of COVID and as per the order issued on May 28, 2020 (2077-02-15 B.S.) by Supreme Court full bench, the defendant is filing a reply within the given time period.

1. Since the claims made under the writ petition can be extracted from the writ document itself, the details are not listed below. Defendant, therefore, presents a written reply providing arguments to quash the writ petition.
2. Petitioner has applied for registration under Tribhuvan University listing gender as Female and the registration was not done similarly, no hearing has been processed when applied to Ministry of Home Affairs for gender marker from 'Other' to 'Female', similarly in first passport copy obtained the gender was listed as female and when the second time the





passport was obtained the gender was listed as others and complaint against it was filed and no hearing has been done by the passport department and without even applying to be listed as other under the gender category Election commission has issued the voter identity card with the gender listed as "Third Gender". Therefore, to issue a suitable order along with mandamus against all the concerned government agencies has been claimed under the writ petition.

3. The activities related to registration under Tribhuvan University, providing citizenship, amendment of passport, and providing voter identity cards are not related to the commission. Since the commission has been made opposition on an unrelated matter the writ petition issued against the commission should be quashed.
4. The commission has been actively working according to the Constitution Article 249 and under the National Human Rights Commission Act 2012 section 4 which mentions function, duties, and power of the commission, it has been clearly recognized that everyone in this commission can enjoy human rights without any distinction.
5. The writ petition registered to state the commission as an opposition should be quashed as the commission has been aware and active in its constitutional role of respecting, protecting, and promoting of Human rights of everyone along with the petitioner.
6. Arguments presented by the legal representation regarding the presented writ petition hearing shall be considered an integral part of this written reply.

Written Reply Presenter

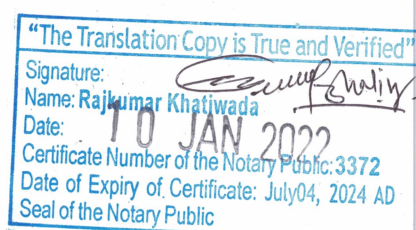
(s/d.....)

(Murari Prasad Kharel)

Acting Secretary

National Human Rights Commission

Dated: July 31, 2021(2078-4-16 B.S.)





Written Reply Submitted to
the Supreme Court

On behalf of the Office of the Controller of Examination, Tribhuvan University.....1.
Office of the Vice-chancellor, representing Bhisnuprasad Aryal, the head, along with 2
others, working as legal advisor of Tribhuvan University Jairam Baskota.....

Written Reply Presenter

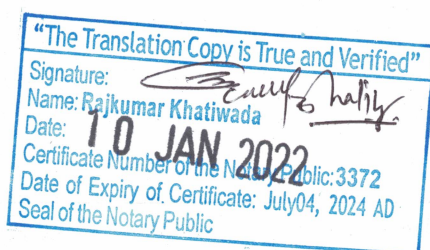
Vs.

Rukshana Kapali.....Opponent/ Petitioner

Case: Certiorari (2077-WO-0973)

The defendant in the case was provided a 15day time period from the Supreme Court to
revert with a written reply within date April 19, 2021 (2078-01-06 B.S.) because of Covid-
19 prohibition was issued and as per the order issued on July 16, 2021 (2078-04-01 B.S.) by
Supreme Court, the defendant is filing a reply within 30 days.

1. Tribhuvan University is a university conducted by Tribhuvan University Act 2048,
established with an objective to provide required education, create manpower, provide
standard higher education, research on various sides, protection and development of
nation's culture and heritage, to develop growth, practicality, and updated education for
art, science, management and business sector for all-round development. Section 4 of
Tribhuvan University Act 1992 Tribhuvan University shall be an autonomous body
corporate with perpetual succession. Similarly, section 5 has made management related
to functions, duties, and powers of the University and section 5(b) provides to give
certificates, as prescribed, to the students, trainees, or researchers who have pursued the
prescribed higher education from any Constituent Campus (Constituent College) and
Affiliated Campus (Affiliated College) and award honorary degrees to dignitaries. Section
27 has provided that the qualification required for admission to the University shall be as
prescribed. TU Organization and Educational Administration Regulation 2050 has under
its rule 11 of Chapter 4 of the has provided the function, duties, and power of the






university similarly, Chapter 58 describes the Office of the controller of examination and Chapter 71 has made the management issue a transcript.

2. Tribhuvan University is an organization to study and teach higher education, students who want to enroll under the university has to pass S.L.C and +2 and has to present both academic qualification certificate along with citizenship. The university provides admission to the person with the same name that they have used in their S.L.C and +2. Any student who has not passed +2 cannot qualify to study in the university. The opposition writ petitioner has under description no. 4 and 5 in the writ petition accepted that her name is not Rukshana Kapali and her birth certificate has been named after the name given by her family and she has not been able to obtain certificates with that name even while studying in school. The opposition under the writ petition has not been able to claim that her name is Rukshana Kapali and she has obtained S.L.C, +2, and citizenship with the same name and because of this she should be provided admission under the same name. Since the university can only take admission and provide a certificate on the name that the opposition has used in S.L.C, +2, and Citizenship the writ petition should be quashed and justice should be served.
3. The descriptions stated in the document are correct and true, I would bear the consequences if proven otherwise.

(s/d.....)

Written Reply Presenter
RepresentativeJairamBaskota

Dated: August 27, 2021(2078-05-11 B.S.), day 06

"The Translation Copy is True and Verified"
Signature: 
Name: Rajkumar Khatriwada
Date: 10 JAN 2022
Certificate Number of the Notary Public: 3372
Date of Expiry of Certificate: July04, 2024 AD
Seal of the Notary Public

